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Finding Aids section of the printed volume and on GPO Access.

§21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) *General.* VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

(1) The individual withdraws because he or she is ordered to active duty; or

(2) All of the following criteria are met:

(i) There are mitigating circumstances;

(ii) The individual submits a description of the circumstances in writing to VA either within one year from the date VA notifies the individual that he or she must submit the mitigating circumstances or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The individual submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(b) *Representative mitigating circumstances.* The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:

(1) An illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable geographical transfer resulting from the individual's employment;

(4) An unavoidable change in the individual's conditions of employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to sus-

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pend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the school;

(7) Unanticipated active duty for training;

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3680(a))

(c) *Failure to complete a course for the educationally disadvantaged.* If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(d) *Withdrawals after May 31, 1989.* In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a)(3))

(e) *Withdrawals during a drop-add period.* If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a))

[31 FR 8292, June 14, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4136, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§21.4138 Certifications and release of payments.

(a) *Advance payments.* (1) VA will make payments of educational assistance in advance when:

(i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;

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(ii) The student is enrolled for half time or more;

(iii) The educational institution at which the veteran, servicemember, reservist, or eligible person is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B) and (C) and (5) pertaining to receipt, delivery, or return of checks and certifications of delivery and enrollment;

(iv) The Director of the VA field facility of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's, servicemember's, reservist's, or eligible person's educational institution;

(v) There is no evidence in the veteran's, servicemember's, reservist's, or eligible person's claim file showing that he or she is not eligible for an advance payment;

(vi) The period for which the veteran, servicemember, reservist, or eligible person has requested a payment either—

(A) Is preceded by an interval of non-payment of 30 days or more; or

(B) Is the beginning of a school year that is preceded by a period of non-payment of 30 days or more; and

(vii) The educational institution or the veteran, servicemember, reservist, or eligible person has submitted the certification required by §21.7151.

(2) The amount of the advance payment to a veteran, reservist, or eligible person is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month. The amount of the advance payment to a servicemember is the amount payable for the entire term, quarter, or semester, as applicable.

(3) VA will mail advance payments to the educational institution for delivery to the veteran, servicemember, reservist, or eligible person. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the period for which VA makes the advance payment.

(4) The Director of the VA field station of jurisdiction may direct that advance payments not be made to indi-

viduals attending an educational institution if:

(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section;

(ii) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the veteran, servicemember, reservist, or eligible person or return to VA; or

(iii) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034, 3680(d))

(b) *Lump-sum payments.* A lump-sum payment is a payment of all educational assistance due for an entire quarter, semester, or term. VA will make a lump-sum payment to:

(1) A veteran or servicemember pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 30;

(2) A servicemember pursuing a program of education at the half-time rate or greater under 38 U.S.C. chapter 30, provided that VA did not make an advance payment to the servicemember for the term for which a lump-sum payment would otherwise be due; and

(3) An eligible person pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3034(c), 3680(f))

(c)-(d) [Reserved]

(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in §21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution.

(Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

(f) *Payment for intervals between terms.* A certification such as described by this section may result in payment for intervals between individual terms, quarters or semesters. In determining whether a veteran or eligible person will be paid for such an interval the Department of Veterans Affairs will first determine whether any of the provisions of paragraph (f)(1) of this section apply. If any do, the Department of Veterans Affairs will make no payment for the interval. If none of the provisions of paragraph (f)(1) of this section apply the Department of Veterans Affairs will examine the appropriate provisions of paragraphs (f)(2) and (3) of this section to determine if payments may be made for the interval.

(1) The Department of Veterans Affairs will make no payment for an interval described in paragraph (f)(2) of this section if:

(i) The student is training at less than the half-time rate on the last date of his or her training during the term, quarter, semester or summer term preceding the interval;

(ii) The student is on active duty;

(iii) The student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;

(iv) The student will exhaust his or her entitlement by receipt of such payment, and it is to the advantage of the individual not to receive payment;

(v) The interval occurs between school years at a school which is not organized on a term, quarter or semester basis;

(vi) The veteran or eligible person withdraws from all his or her courses in the term, quarter, or semester or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter or semester basis; or

(vii) The veteran receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

(2) If none of the provisions of paragraph (f)(1) of this section apply, the Department of Veterans Affairs will use the provisions of this paragraph and paragraph (f)(3) of this section to determine if an interval payment should be made. In determining the length of a summer term the Department of Veterans Affairs will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(i) The Director of the VA facility of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service will decide if payments may be continued. The decision will be based on a full assessment

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of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a VA facility, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA facility where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a VA facility.

(Authority: 38 U.S.C. 3680(a))

(ii) If a veteran or eligible person transfers from one approved educational institution for the purpose of enrolling in and pursuing a similar course at the second institution, the Department of Veterans Affairs may make payments for any intervals which do not exceed 30 days and which occur between consecutive terms, quarters or semesters. If the veteran or eligible person does not enroll in a similar course at the second institution, the Department of Veterans Affairs shall not make payments for the interval.

(iii) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters as defined in §21.4200(b);

(B) A semester or quarter and a term that is at least as long as the interval;

(C) A semester or quarter and a summer term that is at least as long as the interval;

(D) Consecutive terms (other than semesters or quarters as defined in §21.4200(b)) provided that both terms are at least as long as the interval; or

(E) A term and a summer term provided that both the term and the summer term are at least as long as the interval.

(iv) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 30 days and which occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3680)

(3) If a veteran is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), the Department of Veterans Affairs will determine whether the veteran or eligible person is entitled to a payment during an interval as follows:

(i) The Department of Veterans Affairs will treat the ending date of each enrollment period as though it were the veteran's or eligible person's last date of training before the interval.

(ii) The Department of Veterans Affairs will treat the beginning date of each enrollment period as though it were the veteran's or eligible person's first date of training after the interval.

(iii) The Department of Veterans Affairs will examine the interval payment which would be made to the veteran or eligible person on the basis of the various combinations of beginning and ending dates. The ending date and beginning date of the enrollment periods which will result in payment for the interval at the highest rate will be chosen as the start and finish of the interval for Department of Veterans Affairs measurement purposes.

(iv) Payment for the interval will be made at the rate determined in paragraph (f)(4)(iii) of this section. The Department of Veterans Affairs shall not reduce the rate as the result of training the veteran or eligible person may take during the interval, but it shall

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increase the rate if warranted by such training.

(Authority: 38 U.S.C. 3680(a))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0604)

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§ 21.4145 Work-study allowance.

(a) *Eligibility.* (1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30 or 32 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when—

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(b) *Selection criteria.* Whenever feasible, the Department of Veterans Affairs will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Department of Veterans Affairs shall consider the following additional selection criteria:

(1) Need of the veteran, reservist, or eligible person to augment his or her educational assistance allowance;

(2) Availability to the veteran, reservist, or eligible person of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran, reservist, or eligible person; and

(4) Compatibility of the work assignment to the veteran's, reservist's, or eligible person's physical condition.

(c) *Utilization.* Work-study services may be utilized in connection with:

(1) Outreach services program as carried out under the supervision of a Department of Veterans Affairs employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs;

(3) Hospital and domiciliary care and medical treatment at VA facilities;

(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and

(5) Any other appropriate activity of VA.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(d) *Rate of payment.* In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date the contract is signed.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(f) *Veteran, reservist, or eligible person reduces rate of training.* In the event the veteran, reservist, or eligible person reduces his or her training to less than